

**PATENT APPLICATION**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Inventors: Frank L. Greenway *et al.*  
Serial No. 10/559,091 Group: 1655  
International Filing Date: 27 May 2004 Confirmation No. 1228  
Earliest Priority Date: 28 May 2003  
35 U.S.C. § 371 Date: 22 November 2005 Examiner: Winston, R.O.  
For: Angiogenic Agents from Plant Extracts, Gallic Acid and Derivatives  
Atty File No. Greenway 02P01US

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**Attn.: Office of Patent Legal Administration**

**APPLICATION FOR PATENT TERM ADJUSTMENT  
under 37 C.F.R. § 1.705(b)**

This Application for Patent Term Adjustment under 37 C.F.R. § 1.705(b) is submitted in response to the December 14, 2009 "Determination of Patent Term Extension under 35 U.S.C. 154 (b)."

This paper is being filed timely under 37 C.F.R. § 1.705(b). If any extension of time is required, please consider this paper a petition for the total extension of time required.

We are petitioning to have the recent Federal Circuit ruling in *Wyeth v. Kappos* be considered in calculating the proper term adjustment.

The information required by 37 C.F.R. § 1.705(b) is set forth below:

(1) The \$200 fee of 37 C.F.R. § 1.18(e) is being contemporaneously paid online, via EFS-Web. If the amount being paid is incorrect, the Office is authorized to charge any deficiency, or to refund any excess, to Deposit Account 20-0096.

(2) The pertinent facts are the following:

(i) The correct patent term adjustment is 336 days, **plus** an additional period equal to the number of days after January 31, 2010 until the patent issues. The basis for this adjustment is 37 C.F.R. §§ 1.702(a)(1) and 1.702(b). Under section 1.702(a)(1), the patent term is adjusted for each day beyond 14 months from the 35 U.S.C. § 371 date until the first office action. Under section 1.702(b), the patent term is also adjusted for each day beyond three years from the 35 U.S.C. § 371 filing date until the patent issues.

(ii) (A) The period of adjustment under 37 C.F.R. § 1.703(a)(1) is calculated to be 336 days, based on the following facts: The 35 U.S.C. § 371 completion date was May 8, 2006. The day 14 months after that day was July 8, 2007. The first office action was mailed June 24, 2008. Delay due to the Applicants was 47 days, and an addition delay by the Office was 31 days before mailing the Notice of Allowance.

(B) The period of adjustment under 37 C.F.R. § 1.703(b) is calculated as follows: The 35 U.S.C. § 371 filing date was November 22, 2005. The date three years after that day is November 22, 2008. There is no overlap between the period under 37 C.F.R. § 1.703(a)(1) and this period under 37 C.F.R. § 1.703(b). The issue date of the patent is not yet known. The period of delay = { (issue date) - (November 22, 2010) }. This period cannot be determined more precisely until the actual issue date is known.

(C) The total period of adjustment is the sum of the two periods (A) plus (B), since there is no overlap between them. The Court of Appeals for the Federal Circuit recently held that the two periods (A) and (B) should be added together where the periods do not overlap. See *Wyeth v. Kappos*

(Federal Circuit, Docket No. 2009-1120, decided January 7, 2010). Thus the total period of adjustment is equal to:

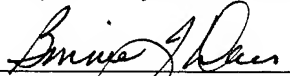
**336 days + { (issue date) - (November 22, 2008)}**

(iii) No terminal disclaimer has been filed.

(iv)(B) There were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of this application under 37 C.F.R. § 1.704.

The Office is respectfully requested to acknowledge that the patent issuing from this application is entitled to a term adjustment equal to the period defined above, and to so indicate on the face of the issued patent.

Respectfully submitted,



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